IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1960 OF 2005

Sarjerao Dnyandeo Jathar. ... Petitioner

Versus.

State of Maharashtra. ... Respondent.

Shri S.V.Sadavarte for the Petitioner.

Shri Rajashree Gadhvi, A.P.P.for the Respondent.

CORAM : ABHAY S. OKA, J.

DATED : 5th Sept., 2005.

P.C.:

1. By order dated 23rd August 2005, the Petitioner was directed to deposit a sum of Rs.3000/- by way of costs in this Court. By the said order, the learned A.P.P. was put to notice that the petition will be decided finally at admission stage. The office noting shows that the sum of Rs.3000/- has been deposited by the Petitioner in this Court.

2. The Petitioner is an accused who has been convicted by the learned Judicial Magistrate First Class, Wai by Judgment and order dated 18th October 2001. The Petitioner has been sentenced to suffer simple imprisonment for one month and to pay a fine of Rs.500/- for offence punishable under section 279 of the Indian Penal Code. He has been sentenced to simple imprisonment for a term of six months and a fine of Rs.1000/- for an offence punishable under section 304-A

of the Indian Penal Code.

3. The Petitioner preferred an appeal before the Sessions Court for challenging the order of conviction and sentence. There was delay of 1246 days in preferring the appeal. Therefore, an application for condonation was filed by the Petitioner which came to be rejected by the learned Sessions Court.

4. The learned Advocate for the Petitioner submitted that reasons were set out in the application for condonation of delay which were supported by the documentary evidence. He pointed out that the Petitioner was faced with several difficulties such as serious sickness of the father and his subsequent demise. He pointed out that the Petitioner himself was not keeping good health and documentary evidence in support was produced before the learned Magistrate. The learned A.P.P. submitted that there was long and unexplained delay and in the absence of cogent and sufficient cause, the delay cannot be condoned and therefore, the learned Additional Sessions Judge was right in rejecting the application.

5. I have considered the submissions made by the learned Counsel for the Applicant and the learned A.P.P. It is true that the delay was of more than 1200 days. The delay was in preferring an appeal for challenging

the order of conviction amd sentence imposed on the Petitioner under section 279 and 304A of the IPC. It is well settled that while considering the application for condonation of delay, the Courts are required to adopt a liberal approach. The ground given in the application is that the father of the Petitioner was required to undergo surgery for removal tumour on 31st July 2004 and 14th October 2004 and ultimately his father died on 15th December 2004. Reliance is placed by the Petitioner on the medical certificate to show that even the Petitioner was advised bed rest for a long period from 15th January 2005.

6. The question of condonation of delay arises only when there is some default on the part of a litigant. This is not a case where it can be said that the conduct of the Petitioner lacks bonafides. This is also not a case where the Petitioner has come to the Court with a false case. Considering the order of conviction and sentence passed against the Petitioner and considering the grounds which are pleaded in the application for condonation of delay, the learned Sessions Judge ought to have adopted a liberal and justice oriented approach. In my view, in the facts and circumstances of the case, the delay deserves to be condoned subject to condition of the Petitioner paying costs. The Petitioner has already deposited a sum of Rs.3000/- by way of costs.

7. Hence I pass the following order:

(i) The impugned Judgment and order dated 28th July 2005 is quashed and set aside and the Miscellaneous Criminal Application No.30 of 2005 is allowed subject to the Petitioner paying a costs of Rs.3000/- to the Respondent-State. The Petitioner has already deposited the said amount of costs in this Court and the Respondent will be free to withdraw the said amount.

(ii) The Appeal preferred by the Petitioner be registered in accordance with law and the same shall be decided on its own merits by the Sessions Court.

(iii) The petition is allowed in the above terms.

(iv) The parties to act on an authenticated copy of this order.

Judge.